

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

MIGUEL MARTINEZ,

Petitioner,

v.

SUPERINTENDENT OF SING SING
CORRECTIONAL FACILITY,

Respondent.¹

No. 19-CV-7651 (KMK) (PED)

ORDER ADOPTING REPORT &
RECOMMENDATION

KENNETH M. KARAS, United States District Judge:

Miguel Martinez (“Petitioner”) has filed a Petition for a Writ of Habeas Corpus (the “Petition”) pursuant to 28 U.S.C. § 2254, challenging his conviction and sentence from a jury trial in New York Supreme Court, Westchester County (“County Court”). (*See generally* Pet. For Writ of Habeas Corpus (“Pet.”) (Dkt. No. 1).) On February 25, 2016, Petitioner was found guilty of robbery in the first degree, robbery in the second degree, grand larceny in the fourth degree, menacing in the second degree, and criminal possession in the third degree. (*See generally* Pet.) On appeal, the Appellate Division affirmed the judgment of conviction. *People v. Martinez*, 83 N.Y.S.3d 677, 679 (App. Div. 2018). The New York Court of Appeals denied Petitioner leave to appeal. *People v. Martinez*, 122 N.E.3d 1121 (Table) (N.Y. 2019).

Petitioner filed the instant Petition on August 9, 2019. (Pet.) On September 25, 2019, the Court referred the Petition to Magistrate Judge Paul E. Davison. (Order of Reference (Dkt.

¹ Petitioner was incarcerated at Five Points Correctional Facility in Romulus, New York, at the time he filed the instant Petition. Petitioner is now incarcerated at Sing Sing Correctional Facility in Ossining, New York. Accordingly, the Superintendent of Sing Sing Correctional Facility is substituted as Respondent pursuant to Rule 25(d) of the Federal Rules of Civil Procedure. The Clerk of Court shall amend the caption to reflect the substitution.

No. 5).) On January 17, 2020, Respondent filed its Memorandum of Law opposing the Petition. (See Mem. of Law in Opp’n to Pet. (Dkt. No. 11).) On April 5, 2020, Petitioner moved to vacate the judgment pursuant to CPL § 440.10. (R. & R. (“R&R”) at 4 (Dkt. No. 23).) On May 5, 2020, Petitioner filed a Motion To Stay this case while his § 440.10 motion was adjudicated. (Mot. To Stay (Dkt. No. 14)). Judge Davison granted Petitioner’s Motion on September 9, 2020 and directed that upon the resolution of the § 440.10 Motion “Petitioner must move, within thirty (30) days, to lift the stay and reopen this case for further proceedings.” (Order at 1 (Dkt. No. 16)). Petitioner’s § 440.10 Motion was denied by the County Court on September 24, 2021. (R&R at 5.) On September 30, 2022, Judge Davison issued an Order To Show Cause as to why the Petition should not be dismissed for Petitioner’s failure to timely request that the stay be lifted. (Order (Dkt. No. 22).) Petitioner has not filed any response. (*See generally* Dkt.)

On November 18, 2022, Judge Davison issued a Report and Recommendation (“R&R”) recommending that this Court dismiss the Petition in its entirety as time-barred. (R&R 11.) Judge Davison provided notice that, pursuant to 28 U.S.C. § 636(b)(1)(C), Rule 72(b) of the Federal Rules of Civil Procedure, and Rule 8(b) of the Rules Governing Section 2254 cases, objections to the R&R were due within 14 days from the receipt of the R&R, or 17 days from the receipt of the same if the R&R was served upon the parties by mail, and that the failure to object or to request extensions of time to file objections within the relevant period of time would constitute a waiver of Petitioner’s right to appeal. (*Id.* at 11–12.) Petitioner has not filed any objections. (*See generally* Dkt.)

When no objections are filed, the Court reviews an R&R on a dispositive motion for clear error. *See Goodall v. Von Blanckensee*, No. 17-CV-3615, 2020 WL 1082565, at *1 (S.D.N.Y. 2020); *Andrews v. LeClaire*, 709 F. Supp. 2d 269, 271 (S.D.N.Y. 2010); *Eisenberg v. New Eng.*

Motor Freight, Inc., 564 F. Supp. 2d 224, 226 (S.D.N.Y. 2008). The Court has reviewed the Petition and R&R, and finding no substantive error, clear or otherwise, adopts the R&R.

Accordingly, it is hereby

ORDERED that the R&R, dated November 18, 2022, is ADOPTED in its entirety.

ORDERED that the Petition is DISMISSED.

ORDERED that because Petitioner has not made a substantial showing of the denial of a constitutional right, a certificate of appealability will not issue, *see* 28 U.S.C. § 2253(c)(2); *Lucidore v. N.Y. State Div. of Parole*, 209 F.3d 107, 111-12 (2d Cir. 2000), and the Court certifies, pursuant to 28 U.S.C. § 1915(a)(3), that any appeal from this Order would not be taken in good faith. It is further

ORDERED that the Clerk of the Court is respectfully directed to mail a copy of this Order to Petitioner and close this case.

SO ORDERED.

Dated: April 10, 2023
White Plains, New York

A handwritten signature in black ink, appearing to read 'KMK', with a horizontal line extending from the bottom of the signature.

KENNETH M. KARAS
United States District Judge